

electromagnetic spectrum that principally involve, or are reasonably likely to involve, a licensee receiving compensation from subscribers in return for enabling them to transmit or receive communications signals.³⁷

The Commission outlines five factors to be considered in determining whether a license should be subject to auction under the statutory authority. These factors include:

- Mutual exclusivity among accepted applications for initial authority. The Commission proposes to state in its rules that, if there is no mutual exclusivity, competitive bidding does not apply.³⁸ Also, the rules would clearly provide that neither renewal nor modification applications would be subject to competitive bidding.³⁹
- General requirement of subscribers. Traditional over-the-air broadcast services -- which do not have paying subscribers -- will not be subject to competitive bidding for the award of licenses.
- Private services excluded. The Commission proposes to exclude from auction procedures initial applications for spectrum used principally for internal uses and not for compensated services to subscribers.⁴⁰
- Intermediate links. Citing point-to-point microwave facilities as incorporated into cellular operations, the Notice contemplates auctioning licenses in services used "as an intermediate link

³⁷ See H.R. Rep. No. 111, 103d Cong., 1st Sess. 253 (1993), reprinted in 1993 U.S.C.C.A.N. 373, 580 ("H.R. Rep. No. 111").

³⁸ Notice at ¶ 22.

³⁹ Id.

⁴⁰ Id. at ¶¶ 25, 26.

in the provision of a continuous, end-to-end service to a subscriber."⁴¹

- Principal use requirement. The Commission proposes to assess whether licenses are "principally used" for the transmission or reception of communications signals for subscribers for compensation on a class basis rather than on an individual basis.⁴²
- A. McCaw Generally Concurs in the Notice's Proposed Parameters for Determining Whether a License Should Be Auctioned

The proposals set out in the Notice for establishing the basic parameters for deciding which categories of licenses are to be granted based on competitive bidding are generally consistent with the legislation. McCaw supports the limitation of auctioning, consistent with the statutory mandate, to initial mutually exclusive applications.

The Commission's definition of modification applications to be processed outside the competitive bidding structure will require careful delineation. A "modification" for purposes of the Act should not be limited merely to relocation of or alterations in existing transmitters or similar changes. For licenses granted on a service area basis (such as the cellular service), the installation of additional transmitter sites within the licensed service area clearly would be excluded. While paging operators are not

⁴¹ Id. at ¶ 29.

⁴² Id. at ¶ 31.

granted authorizations for a predefined service area,⁴³ they may file applications for new transmitter sites that are added to existing authorizations under the same call sign. Applications for such facilities serve to modify existing operations and should clearly be processed without competitive bidding.⁴⁴

B. Intermediate Links Should Not Be Subject to Competitive Bidding

McCaw opposes the proposal contained in the Notice to auction "licenses used in services as an intermediate link,"⁴⁵ at least as applied to point-to-point microwave service employed in cellular systems. While the classification of these links as "an integral part of an end-to-end service offering enabling paying subscribers either to transmit . . . or receive communications signals" may be

⁴³ McCaw submits the public interest would be served by a regulatory scheme in which paging licenses are awarded on an exclusive basis for a given geographical market. Among other benefits, this would enable paging licensees to react more quickly to the needs of subscribers and would provide paging licensees with regulatory treatment comparable to that afforded other providers of commercial mobile services.

⁴⁴ If a wide area paging system exceeds ninety-nine transmitters, it is McCaw's experience that the Commission's Mobile Services Division assigns a new call sign, despite the fact that the facilities are all part of a single, integrated system. Thus, the test for determining whether a new facility, subject to competitive bidding, is being proposed should not necessarily be whether a new call sign is to be assigned to the application.

⁴⁵ Id. at ¶ 29.

"administratively efficient,"⁴⁶ it would directly contravene the purposes of the Budget Act and disserve the public interest.

The Notice uses point-to-point microwave transmissions deployed as part of cellular system operations as its example of an intermediate link. McCaw makes substantial use of such Part 22 microwave facilities in its cellular and paging operations. A review of this usage discloses the adverse effects of the Commission's proposal.

Point-to-point microwave facilities are used by cellular carriers primarily to interconnect cell sites with one another and with the system switching center ("MTSO"). In some cases, microwave facilities are used in lieu of wireline interconnection facilities supplied by a local exchange carrier. In other situations, cells are located at sites that are not and cannot be reached by landline facilities, and microwave transmissions are the only viable method of system interconnection. In both cases, deployment of microwave affords cellular carriers with greater control over: (1) quality, performance, maintenance, and repair; (2) costs; and (3) timing of service initiation over both the microwave and cellular facilities.⁴⁷ Indeed, microwave

⁴⁶ Id.

⁴⁷ E.g., Comments of McCaw Cellular Communications, Inc. CC Dkt. No. 93-2 (Mar. 16, 1993) at 4-5. See also McCaw (continued...)

facilities are often used to permit cellular carriers more quickly to bring cellular transmitters into service, thereby expanding or improving cellular coverage areas.⁴⁸

These substantial public interest benefits stand to be lost if the Commission adopts its proposal to auction intermediate link licenses. Initially, point-to-point microwave applications are subject to prior frequency coordination, so that mutual exclusivity rarely occurs.⁴⁹ That fact alone warrants excluding such applications from competitive bidding.

If adopted, however, the Notice's proposal promises to create perverse incentives affecting the behavior of point-to-point microwave licensees in two respects. First, to ensure necessary spectrum for expanding cellular usage, carriers may attempt to build spectrum "reserves" for the future. Licenses thus may be awarded to carriers without immediate need of the spectrum, resulting in warehousing.

⁴⁷(...continued)

Cellular Communications, Inc. Petition for Rulemaking in the Matter of Part 21 of the Commission's Rules and Regulations To Facilitate the Licensing and Initiation of Operation of Point-to-Point Microwave Radio Service Facilities, RM-7861 (Oct. 16, 1991).

⁴⁸ Similarly, paging systems use intermediate microwave links to interconnect base station sites and intermediate paging terminals. This is done to reduce operational expenses and/or to interconnect paging terminals to base stations in inaccessible locations.

⁴⁹ See 47 C.F.R. § 21.100(d) (1992).

Second, applicants may deliberately seek to create mutually exclusive situations in order to block or delay or increase the costs of growth of competitors' systems, or merely to obtain microwave spectrum for their own systems.⁵⁰

Either result would impede achievement of the Commission's goal of facilitating the rapid provision of cellular and other services to the public. Moreover, this outcome ignores the Congressional directive to "avoid mutual exclusivity in application and licensing proceedings."⁵¹ As discussed above, the action proposed in the Notice would encourage the filing of mutually exclusive applications in a service where such situations currently are rare.

The Notice justifies the proposal to auction intermediate link licenses on the grounds that "it would eliminate the necessity of determining the nature of use being made of a particular license."⁵² Obviously, the Commission should not adopt a licensing policy that is ill-suited to achieving enumerated objectives simply because that

⁵⁰ The Commission's past licensing experiences underscore the fact that various entities will take advantage of the opportunity to file mutually exclusive applications in order to block legitimate expansion plans of existing licensees (as in the cellular unserved areas context) or the efforts of a service innovator to establish operations (as at 220 MHz).

⁵¹ Conference Report at 485, 1993 U.S.C.C.A.N. at 1174.

⁵² Notice at ¶ 29.

policy is somewhat less taxing on its administrative resources.

Finally, point-to-point microwave licenses are more properly viewed as being akin to those in the private operational fixed service ("POFS") in that they are principally used to satisfy the internal or private needs of the carrier. Thus, in general, the point-to-point microwave links are not the core of the service offered to the public but are necessary to permit the carrier to provide its cellular services. The Commission has tentatively concluded that POFS licenses should not be subject to auctions.⁵³ The same rationale should be applied to point-to-point microwave links deployed in support of cellular and paging operations.

**IV. THE COMMISSION SHOULD APPLY COMPETITIVE
BIDDING PROCEDURES TO PRIVATE RADIO
LICENSES MEETING THE STATUTORY REQUIREMENTS
AND TO LICENSES FOR CELLULAR UNSERVED AREAS**

**A. Private Radio Licenses Involving Mutual
Exclusivity and For-Profit Service to Subscribers
Should Be Subject to Competitive Bidding**

While the Notice requests comment on the applicability of competitive bidding to private radio services, McCaw believes that the legislation provides clear guidance on this issue.⁵⁴ As discussed earlier, the Commission is authorized

⁵³ Id. at ¶ 146 & n.156.

⁵⁴ Id. at ¶¶ 131-46.

to utilize competitive bidding procedures when mutually exclusive applications for an initial license or construction permit are accepted for filing and the principal use of the license involves service to subscribers in return for compensation. The language is unequivocal. Congress intended the Commission to auction all licenses -- whether private or not -- meeting these statutory criteria.

Accordingly, McCaw recommends that competitive bidding be implemented for mutually exclusive applications for private radio licenses involving for-profit service to subscribers. Under current regulations, specialized mobile radio and private carrier paging licenses are likely candidates for mutually exclusive applications and thus competitive bidding.⁵⁵

B. Auctions Should Be Applied to Cellular Service Unserved Areas Applications

Earlier this year, the Commission received thousands of applications for cellular unserved areas, with the intent of

⁵⁵ Of course, the Commission is concurrently considering, in a separate proceeding, issues involving comparable regulatory treatment of functionally similar services. See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, FCC 93-454 (Oct. 8, 1993). Just as all commercial mobile service providers are to be regulated based on the nature of the services provided, auction processing should be applied to similar services, regardless of their current regulatory status.

selecting licensees by means of lottery.⁵⁶ The Commission now has proposed to place these applications in the competitive bidding process.⁵⁷ McCaw supports this action for the currently pending applications as well as for any future unserved area applications facing mutually exclusive competitors.

V. CONCLUSION

Acting quickly and responsibly in response to the Congressional grant of auction authority, the Commission for the most part has set forth sound competitive bidding principles and procedures. The Notice then threatens the validity of the auction process by proposing the use of combinatorial bidding. This untested methodology adds layers of complexity and confusion, and invites legal challenge to the auction process and will lead to delays in the quick deployment of PCS. The Commission should reject combinatorial bidding, and instead, consistent with the

⁵⁶ Notice at ¶ 160.

⁵⁷ Id.

dictates of the public interest, rely upon straightforward, sequential, simple oral auctions.

Respectfully submitted,

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